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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Rules and Policies on Foreign Participation)	IB Docket No. 97-142
in the U.S. Telecommunications Market)	
)	

OPPOSITION TO PETITION FOR RECONSIDERATION

Ameritech respectfully submits this opposition to the petition for reconsideration filed by MCI Telecommunications Corporation ("MCI") regarding the Commission's Report and Order, released on November 26, 1997, in the above-referenced proceeding.¹

The *Foreign Participation Order* culminates the Commission's efforts, beginning more than two years ago, to promote effective competition in the global market for telecommunications services, while, at the same time, preventing conduct that could harm competition and consumers in the U.S. market. Over the course of these efforts, the Commission has developed substantial expertise and an extensive record concerning the competitive issues relating to the provision of international telecommunications services generally, and, in particular, to foreign-affiliated carrier provision of such services in the U.S. market.

In June 1997, the Commission issued a *Notice of Proposed Rulemaking* seeking comment on how it should amend its rules to create a regulatory framework better adapted to the more open environment resulting from the World Trade Organization

¹ *Rules and Policies on Foreign Participation*, IB Docket No. 97-142, Report and Order, FCC 97-398 (rel. Nov. 26, 1997) ("*Foreign Participation Order*").

Basic Telecommunications Agreement.² Based on the Commission's in-depth review of comments submitted in response to the *Notice* by 47 parties, including MCI, the Commission adopted the *Foreign Participation Order*, in which, *inter alia*, it revised the competitive safeguards governing foreign-affiliated carrier provision of telecommunications services. In so doing, the Commission sought to adopt a more narrowly tailored regulatory framework that would allow it to monitor and detect anticompetitive conduct in the U.S. market, while, at the same time, eliminating unnecessary rules that could hamper the development of competition in the international telecommunications market. Consistent with this approach, the Commission declined to condition authorizations to provide resold switched service to affiliated markets on the foreign affiliate offering U.S.-licensed carriers a settlement rate for the affiliated route at or below the relevant benchmark adopted in the *Benchmark Order*.³ Instead, the Commission adopted a reporting requirement for switched resellers affiliated with a foreign carrier with market power in a foreign market in order to monitor the potential for traffic distortion on the affiliated route.⁴

² *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Docket No. 97-142, Order and Notice of Proposed Rulemaking, FCC 97-195 (rel. June 4, 1997) ("*Notice*").

³ *Foreign Participation Order*, FCC 97-195 at paras. 192-214. In the *Benchmarks Order*, the Commission concluded that it should condition foreign-affiliated carrier authorizations to provide facilities-based switched or private line service to an affiliated market on compliance with the Commission's benchmark settlement rates, in order to reduce the ability of U.S.-licensed carriers to engage in a predatory price squeeze (*i.e.*, to price below the level of their imputed costs) when providing service to an affiliated foreign market. *Id.* at 192. See also *International Settlement Rates*, IB Docket 96-261, Report and Order, FCC 97-280 (Rel. Aug. 18, 1997) ("*Benchmarks Order*"), *recon. pending*. Because it did not find that the same danger of anticompetitive effects results from a switched reseller's provision of service to an affiliated market, the Commission rejected suggestions by MCI and others that it apply the same condition to switched resale providers.

⁴ *Id.*

Despite the extensive record developed in this proceeding, and the Commission's painstaking efforts to balance competing interests and fashion safeguards that address identifiable harms to competition and consumers in the U.S. market without imposing unnecessary burdens on companies that provide service to the U.S. market, MCI seeks reconsideration of the Commission's decision not to apply the settlement rate benchmark condition to switched resale providers.⁵ In so doing, MCI merely dredges up arguments that have already been considered at length by the Commission, and rejected on their merits. MCI's petition should, therefore, be denied.

I. The Commission Should Reject MCI's Attempt to Revive Arguments that the Commission has Already Rejected.

In support of its petition, MCI claims that the Commission erred in concluding that the threat of competitive distortion in the U.S. market due to foreign carrier entry through switched resale is not as great as that posed by facilities-based entry.⁶ MCI maintains that, contrary to the Commission's findings, foreign affiliated carriers that enter the U.S. market through switched resale have substantially the same incentive and ability to distort competition in the U.S. market as those that enter on a facilities basis.⁷

⁵ Specifically, MCI argues that the Commission should condition switched resale authorizations to serve foreign-affiliated markets on the foreign carrier offering U.S.-licensed carriers a settlement rate for the affiliated route at or below the relevant benchmark, or, in the alternative, decline to grant authorization until the foreign carrier commits to reduce its settlement rate to the applicable benchmark by the date established in the *Benchmarks Order*, and achieve proportionate annual reductions in its settlement rate during the transition to the benchmark. MCI Petition at 2.

⁶ MCI Petition at 4 (citing *Foreign Participation Order*, FCC 97-398 at paras. 193-206).

⁷ MCI Petition at 5 (arguing that, as long as the foreign affiliate collects high settlement rates for all traffic it terminates from the United States, its affiliated U.S. reseller can use these accounting rate subsidies to compete unfairly and distort competition in the United States).

MCI contends that the Commission also erred in concluding that anticompetitive behavior by switched resellers would be easier to detect than such behavior by facilities-based carriers.⁸

The Commission has already considered at great length, and rejected, precisely these same arguments in concluding in the *Foreign Participation Order* that a benchmark condition for switched resale service to affiliated markets is unnecessary.⁹ Because MCI does not offer any compelling new evidence or arguments that were not already considered and rejected by the Commission, there is no reason for the Commission to revisit its decision not to impose a benchmark condition for authorizations to provide switched resale service to affiliated markets.

In addition, the adoption of a benchmark condition for switched resale to affiliated markets is contrary to the public interest because it could have the effect of prohibiting carriers with foreign affiliates from offering global service to their customers. Moreover, the imposition of such a condition would penalize foreign countries seeking to open their markets to competition and foreign investment by dissuading U.S. carriers from investing in foreign telecommunications providers.

⁸ *Id.* at 5-8 (arguing that foreign-affiliated resellers could easily set their retail prices in an anticompetitive manner, without detection, because their costs would be obscured in the complicated and constantly changing resale market).

⁹ *See Foreign Participation Order*, FCC 97-398 at paras. 198-203 (rejecting the argument that a reseller has the incentive and ability to engage in a price squeeze because the additional settlements profits to its foreign affiliate would more than offset the carrier's losses from engaging in below-cost pricing, and concluding that: (1) it is not clear that such pricing behavior would harm consumers because calling prices would remain low permanently; and (2) even if it did, such a strategy likely would not be successful). *See id.* at paras. 204-06 (rejecting MCI's argument that the existence of a spot market for wholesale minutes makes it more difficult to detect a price squeeze strategy by a switched reseller, and concluding that detection of an attempted price squeeze strategy by a reseller is easier than by a facilities-

Accordingly, the Commission should deny MCI's petition.

II. The Commission Should Reject MCI's Proposed Conditions to Address Traffic Distortion in the U.S. Market.

In the *Foreign Participation Order*, the Commission required that all switched resellers file quarterly traffic and revenue reports on routes where they are affiliated with a carrier at the foreign end that has market power.¹⁰ MCI claims, without any explanation, that this reporting requirement is "wholly inadequate," and argues that the Commission should "expand this condition to require each switched reseller to include in its quarterly reports the traffic and revenue information of its foreign affiliate on the affiliated route."¹¹

The Commission has stated that its goal in this proceeding is "to adopt a regulatory framework that is narrowly tailored to address identifiable harms to competition and consumers in the U.S. market."¹² It has, therefore, announced that it would "approach critically any request for conditions that would impose additional

based carrier because a significant portion of a switched reseller's costs (that is, the wholesale rate at which it takes service) is known or readily identifiable by the Commission and the underlying carrier).

¹⁰ *Foreign Participation Order*, FCC 97-398 at para. 211. The Commission found that concerns about potential traffic distortions resulting from resellers engaging in call turnaround schemes, or re-originating calls from third countries, are not directly related to affiliation status. *Id.* at paras. 209, 211 (observing that the incentive and, to a large extent, the ability to engage in such traffic distortions exist regardless of whether there is an affiliate relationship between a foreign and U.S. carrier, because, for example, any U.S. carrier would increase revenues by participating in call turnaround). Nevertheless, the Commission adopted the foregoing reporting requirement to enable it to detect whether switched resellers are engaging in traffic distortions on affiliated routes. *Id.* at para. 211.

¹¹ MCI Petition at 8.

¹² *Foreign Participation Order*, FCC 97-398 at para. 194.

burdens on the manner in which companies could provide service to the U.S. market.”¹³

Consistent with this approach, and the Commission’s stated objective of minimizing regulatory burdens on U.S. international carriers, the Commission should reject MCI’s unsupported contention that the existing reporting requirement is inadequate, and, therefore, its proposal to require switched resellers to include in their quarterly reports the traffic and revenue information of foreign affiliates on affiliated routes.¹⁴

MCI further argues that, in order to discourage U.S.-licensed switched resellers from engaging in traffic-distorting practices, the Commission should clarify that, if any party presents credible evidence of efforts by an authorized switched reseller to distort competition in the U.S. international services market, it will issue an order requiring the accused carrier to show cause on an expedited basis that it has not engaged in such efforts, and impose the benchmark condition on the offending carrier if it fails to make such a demonstration.¹⁵ Once again, MCI offers no justification for its proposal, nor does it explain why the Commission’s existing procedures are inadequate. Moreover, it does not specify what “credible evidence” of efforts to distort competition in the U.S. international services market might be. The Commission should, therefore, reject MCI’s

¹³ *Id.*

¹⁴ Ameritech notes that the Commission expressly reserved the right to review and, if necessary, impose additional conditions as necessary on individual authorizations if it finds that a carrier is attempting to engage in anticompetitive behavior. *Foreign Participation Order*, FCC 97-398 at para. 212. Additionally, the Commission stated that it would take appropriate measures if it found that a U.S.-licensed carrier is engaging in traffic distortion practices that harm competition and consumers in the U.S. market, regardless of whether the carrier is providing service to an affiliated market. *Id.* The Commission can, therefore, take appropriate action if carriers engage in anticompetitive traffic distortions, or if the existing reporting requirement proves to be inadequate. *See id.* at para 214.

¹⁵ MCI Petition at 8-9.

baseless proposal.

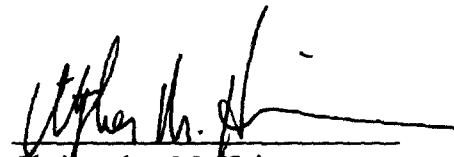
Finally, MCI proposes, again without offering any supporting rationale, that the Commission require all foreign-affiliated switched resellers to file copies of all contracts and arrangements with any other carrier relating to services and traffic on affiliated routes. The Commission has already considered, and rejected, a similar proposal by MCI on the ground that such a general requirement is not necessary to prevent anticompetitive behavior by switched resellers with foreign affiliates.¹⁶ Accordingly, and for the same reasons articulated above, the Commission should reject this proposal as well.

¹⁶ MCI previously argued that the Commission should require switched resellers with foreign affiliates that have market power to file with the Commission “copies of all contracts, agreements and arrangements, whether written or oral, with any other carrier relating to services and traffic on all routes.” *Foreign Participation Order*, FCC 97-398 at para. 205 (citing MCI November 17 *Ex Parte* at 2). The Commission concluded, however, that it could monitor the market and take appropriate action to prevent anticompetitive behavior without imposing the condition proposed by MCI. *Id.* In so doing, the Commission observed that the existence of a spot market in wholesale minutes would afford market participants up-to-date information on pricing trends, and thereby facilitate detection of an attempted price squeeze scheme by a switched reseller. *Id.* In addition, the Commission noted that it could require carriers to provide information necessary to calculate the price at which they take service. *Id.*

III. Conclusion.

For the foregoing reasons, Ameritech urges the Commission to deny MCI's petition for reconsideration filed in this proceeding.

Respectfully submitted,


A handwritten signature in black ink, appearing to read "Christopher M. Heimann", is written over a horizontal line.

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February 10, 1998

CERTIFICATE OF SERVICE

I, Toni R. Acton, do hereby certify that a copy of the Opposition to Petition for Reconsideration has been served on the parties listed on the attached service list, by courier or by first class mail, on this 10th day of February 1998.

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